



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,587	12/22/2003	Noel Wayne Anderson	16111-US	7986
78833 7590 01/14/2010				
DUKE W. YEE				
YEE & ASSOCIATES P.C.				
P.O. BOX 802333				
DALLAS, TX 75380				
EXAMINER				
FISHER, PAUL R				
ART UNIT		PAPER NUMBER		
3689				
NOTIFICATION DATE		DELIVERY MODE		
01/14/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeciipaw.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/743,587

Applicant(s)

ANDERSON, NOEL WAYNE

Examiner

PAUL R. FISHER

Art Unit

3689

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689

Continuation of 11, does NOT place the application in condition for allowance because: The applicant's arguments have been considered by the Examiner but have not placed the application in condition for allowance.

In response to the applicant's argument that, "While this overall goal may exist, it is accomplished by 'timing' the forwarder to meet the harvester when the harvester's load is full - and not by path selection," the Examiner respectfully disagrees. While timing does exist in the reference the timing could not be achieved without a path selection. Therefore the rejection is maintained.

In response to the applicant's argument that, "Motz does not teach a path selection that pertains to unloaded harvested material, and therefore does not describe any selection of a path plan for minimization of economic cost factors," the Examiner respectfully disagrees. As stated in the rejection the goal of Motz is to minimize economic cost so that the harvester does not have to sit idle and can continue to gather more material. Clearly an economic cost factor is minimized in Motz. In regards to the unloaded harvested material, the material has been unloaded as shown on page 11, where the material is transferred to a grain cart or unloaded from the harvester. The rejections are therefore maintained.

In response to the applicant's argument that, "the resulting combination does not teach or suggest determining the 'material location' data as the term is defined in the claims," the Examiner respectfully disagrees. As shown above the material is in fact unloaded from the harvester. Further the Mueller determines the 'material location'. The rejections are therefore maintained.

In response to the applicant's argument that, "there would be no reason to use this Mueller sensor data in selecting a path since the sensor is fixed and therefore is always at the same position - so such path selection associated with such fixed sensor would not be needed," the Examiner respectfully disagrees. If there are more than one location in which to pick up loads, a path plan is in fact needed to determine how to get to the various locations when it is time to pick up the material. The rejections are therefore maintained.

In response to the applicant's argument regarding impermissible hindsight, the Examiner respectfully disagrees as shown above the material is unloaded and when combined the references disclose developing a path plan for material pick up from various locations. The rejections are therefore maintained.

In response to the applicant's argument that, shortest possible path is not taught. The Examiner respectfully disagrees. Since the path plan discloses a desired path in the desired time it is obvious that the machine takes the shortest path to reach the target on time since the claim requires it go through one of a harvested, unharvested and transportation are the Examiner is showing travel through an unharvested area and reason for doing so. The rejections are therefore maintained.

In response to the applicant's argument that, "Claim 4 has been erroneously rejected as the resulting combination does not teach or suggest a regular basis updating with respect to an unloaded harvested material location, as claimed," the Examiner respectfully disagrees. As shown above the material is unloaded and Motz discloses Page 6, line 19 through page 7, line 2; disclose that the model is updated in real-time as the machines traverse the field, the Examiner considers real-time to be on a regular basis. The rejections are therefore maintained.

In response to the applicant's argument regarding claim 6, the material is unloaded and the locations are updated as shown above. The rejections are therefore maintained.

In response to the applicant's argument that the user specification of both background data and material, the Examiner respectfully disagrees. The passage cited in the rejection Page 8, line 20-28; discloses that data includes determining an expected location of the first agricultural machine at the expected time. Page 10, lines 1-9; disclose a user interface for displaying various conditions, discloses that the user can specify any kind of information they choose and since the data being collected includes both material data and background it would have been obvious they could display that information. The rejections are therefore maintained.

In response to the applicant's argument that, "The Examiner alleges that Mueller teaches all aspects of Claim 11," the Examiner respectfully disagrees. The applicant appears to be mistaken claim 11 was not solely rejected using Mueller rather Motz, Hayami and Mueller were used. The applicant appears to be arguing the references separately. The rejections are therefore maintained.

In response to the applicant's argument that, "user can manually 'operate' a machine does not teach or suggest providing a user interface that allows a user to override the background data that is obtained," the Examiner respectfully disagrees. As shown above an interface is available to the operator and the operator is able to override the system since this is not a positive limitation the reference is not required to disclose overriding information, rather all that is required is the ability to override data and since the operator can override the system it is obvious they override the data. The rejections are therefore maintained.

In response to the applicant's argument regarding claims 8 and 9, that "Weigelt does not describe any type of path plan selection, and therefore cannot describe particular details pertaining to such (missing) path plan selection," the Examiner respectfully disagrees. Again the applicant is arguing the references separately. Weigelt was not solely used to reject claims 8 and 9 and further when combined with the over references of Motz, Hayami and Mueller, the references read over the claims are currently written. The rejections are therefore maintained.

In response to the applicant's argument that, "None of these activities are a 'marking' action associated with harvested material that is marked," the Examiner respectfully disagrees. The cited activities include the position of the material which is effectively marking the position of the material the second reference Mueller was used to show the type of marking being optical. Since the location is known the material is in fact marked. The rejections are therefore maintained.

In response to the applicant's argument that, the references do not include reading the marker, the Examiner respectfully disagrees. As stated above and in the rejection, the cited activities include the position of the material which is effectively marking the position of the material the second reference Mueller was used to show the type of marking being optical. Since the location is known the material is in fact marked. Since the combined system reads the location and directed the forwarder the Examiner asserts that the references when combined read over the claimed invention. The rejections are therefore maintained.

In response to the applicant's argument that, the markers in Motz are different from the claimed 'marker', the Examiner respectfully disagrees. Further the applicant is arguing the references separately and read in combination the Examiner asserts that the references over the claimed invention the rejections are therefore maintained.

For at least the reasons set forth above all rejections have been maintained. .